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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 NATIONSTAR MORTGAGE LLC,

11 Plaintiff,

12 vs.

13 EAST TROP 2073 TRUST; and CANYON
14 WILLOW TROP OWNERS' ASSOCIATION,

15 Defendants.
16

Case No.: 2:17-cv-01769-MMD-CWH

**NATIONSTAR MORTGAGE LLC'S
MOTION TO ENLARGE TIME TO
SERVE SUMMONS AND COMPLAINT
PURSUANT TO FED. R. CIV. P. 4(m)
AND 6(b)**

17
18 Plaintiff, Nationstar Mortgage LLC ("Nationstar"), by and through its attorneys of record,
19 Dana Jonathon Nitz, Esq. and Regina A. Habermas, Esq., of the law firm of Wright, Finlay &
20 Zak, LLP, hereby moves the Court for an Order enlarging the time to serve the Summons and
21 Complaint on Defendant East Trop 2073 Trust (the "Trust") pursuant to Fed. R. Civ. P. 4(m) and
22 6(b).

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1 This Motion is made and based upon the following Memorandum of Points and
2 Authorities, all papers and pleadings filed in the case, and any argument that may be presented
3 at the hearing on this matter.

4 DATED this 22nd day of September, 2017.

5
6 WRIGHT, FINLAY & ZAK, LLP

7 /s/ Regina A. Habermas, Esq.

8 Dana Jonathon Nitz, Esq.

9 Nevada Bar No. 0050

10 Regina A. Habermas, Esq.

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13 Las Vegas, NV 89117

14 *Attorneys for Plaintiff, Nationstar Mortgage LLC*

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I. INTRODUCTION

17 This case concerns a homeowners association's non-judicial foreclosure sale, which
18 occurred on August 2, 2013, involving real property situated at 5710 E. Tropicana Avenue, Unit
19 2073, Las Vegas, Nevada 89122 (the "HOA Sale"). The case arises out of and relates to the
20 HOA Sale and the HOA and its trustee's conduct in connection therewith, including the
21 subsequent handling of the proceeds of the HOA Sale.

22 Nationstar respectfully requests the Court enter an Order enlarging the time to serve the
23 Summons and Complaint on the Trust pursuant to Fed. R. Civ. P. 4(m) and 6(b). This Court has
24 broad discretion to enlarge the time for service. In re Sheehan, 253 F.3d 507, 513 (9th Cir.
25 2001). Thus, the Court may enlarge the period of time within which a Summons and Complaint
26 is to be served even where a party fails to demonstrate good cause for failure to serve within 90
27 days. Id. Nationstar submits that it has made a diligent effort to serve the Trust within the
28 prescribed period but has been unable to do so. Therefore, Nationstar respectfully requests that
the Court enter an order providing Nationstar with an additional 60 days to effectuate service of
the Summons and Complaint upon the Trust.

1 **II. PROCEDURAL HISTORY**

2 On June 27, 2017, Nationstar filed its Complaint for Quiet Title and Declaratory Relief
3 against the Trust. [ECF No. 1]. On July 12, 2017, Nationstar filed its Notice of Lis Pendens
4 [ECF No. 3]. On August 4, 2017, Nationstar filed its Certificate of Interested Parties [ECF
5 No. 6]. On September 18, 2017, Summonses directed to Canyon Willow Trop Owners'
6 Association and East Trop 2073 Trust were issued by the Court [ECF No. 9].

7 Nationstar has received confirmation from its process server that it has been unable to
8 effectuate service upon the Trust at the street address provided in the Foreclosure Deed, pursuant
9 to which the Trust claims an interest in the subject real property, which is a P.O. Box.¹
10 Nationstar conducted a search as to the location of the P.O. Box and determined it is located at
11 5348 Vegas Drive, Las Vegas, NV 89108. However, Nationstar's process server was advised by
12 the front desk reception at that location "that they have no record of East Trop 2073 Trust."²
13 Therefore, Nationstar was unable to effectuate service on the Trust at that address.
14

15 In addition, the Trustee's Deed Upon Sale fails to identify the Trustee of the Trust and
16 Nationstar has been unable to identify a registered agent for the Trust or to determine whether
17 the Trust is registered with the Nevada Secretary of State. Therefore, Nationstar has not been
18 able to serve the Summons and Complaint. At this time, an alternative method of personal
19 service via service on the Nevada Secretary of State will need to be employed to effectuate
20 service upon the Trust. Nationstar also needs to evaluate whether publication of the Summons
21 and Complaint is required.

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27 ¹ A true and correct copy of the Foreclosure Deed is attached hereto as **Exhibit 1**. A true and
28 correct copy of the process server's Affidavit of Due Diligence is attached hereto as **Exhibit 2**.
 ² A true and correct copy of the communication between the assigned paralegal and the process
 server, Nationwide, is attached hereto as **Exhibit 3**.

1 **III. THE COURT SHOULD ISSUE AN ORDER GRANTING NATIONSTAR AN**
2 **ADDITIONAL 60 DAYS TO EFFECTUATE SERVICE OF THE SUMMONS AND**
3 **COMPLAINT UPON THE TRUST**

4 Fed. R. Civ. P. 4(m) establishes the time for service on domestic defendants:

5 If a defendant is not served within 90 days after the complaint is filed, the court—
6 on motion or on its own after notice to the plaintiff—must dismiss the action
7 without prejudice against that defendant or order that service be made within a
8 specified time. But if the plaintiff shows good cause for the failure, the court must
9 extend the time for service for an appropriate period. This subdivision (m) does
10 not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to
11 service of a notice under Rule 71.1(d)(3)(A).

12 Thus, Rule 4(m) provides two avenues for relief. Lemoge v. United States, 587 F.3d 1188, 1198
13 (9th Cir. 2009). The first is mandatory: the district court must extend time for service upon a
14 showing of good cause for failure to serve within 90 days. Id. The second is discretionary: if the
15 serving party does not show good cause, the Court has discretion to extend time for service, or to
16 dismiss the complaint without prejudice. In re Sheehan, 253 F.3d 507, 513 (9th Cir. 2001). The
17 Court's discretion to extend time for service, or to dismiss without prejudice for failure to timely
18 serve, is broad. Id. The Court may extend time for service even after the 90-day period expires.
19 Efaw v. Williams, 473 F.3d 1038, 1041 (9th Cir. 2007). However, that is not necessary in this
20 case because this Motion is filed prior to the expiration of the 90 day period for service.

21 Here, the Court should exercise its discretion to extend the time for service and grant
22 Nationstar an additional 60 days to effectuate service of the Summons and Complaint upon the
23 Trust. Nationstar has attempted to serve the Trust within the prescribed period to no avail.
24 Nationstar has employed good faith attempts to serve Nationstar and its inability to serve the
25 Trust, to date, is not the result of intentional delay. Nationstar submits that, at the very least,
26 Nationstar has demonstrated excusable neglect for its failure to timely serve the Trust within the
27 90 day period. However, Nationstar further submits that the Court may nonetheless exercise its
28 discretion and enlarge the time for service of the Summons and Complaint without such a
showing. As recognized in In re Sheehan, the 1993 amendment of Rule 4(m) “added a
discretionary component to Rule 4, so that the rule no longer required a showing of good cause
to extend the time period [for service].” 253 F.3d at 514. Accordingly, even “if good cause is not

1 shown, the Court has the discretion to extend the time period.” Id. Nationstar has shown good
2 cause for the delay due to either outdated or incorrect information for the Trust and its apparent
3 failure to register with the Nevada Secretary of State. A brief 60-day extension of the deadline to
4 serve the Summons and Complaint will not result in delay or undue prejudice to either the Trust.

5 **IV. CONCLUSION**

6 Based on the foregoing, Nationstar respectfully requests an Order from the Court
7 granting an additional 60 days to effectuate service of the Summons and Complaint upon
8 Defendant the Trust.

9 DATED this 22nd day of September, 2017.

10 WRIGHT, FINLAY & ZAK, LLP

11 /s/ Regina A. Habermas, Esq.

12 Dana Jonathon Nitz, Esq.

13 Nevada Bar No. 0050

14 Regina A. Habermas, Esq.

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18 *Attorneys for Plaintiff, Nationstar Mortgage LLC*

19 **EXHIBIT INDEX**

Exhibit No.	Description of Document
1	Foreclosure Deed
2	Affidavit of Due Diligence
3	Communication from Nationwide to Wright, Finlay & Zak, LLP

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23 IT IS SO ORDERED.

24 DATED: 9/26/17

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27 C.W. HOFFMAN, JR.

28 UNITED STATES MAGISTRATE JUDGE